

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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TERRY PUCKETT,

Case No. 15-CV-3249 (SRN/JJK)

Plaintiff,

v.

REPORT AND RECOMMENDATION

QUANTUM DIGITAL CONNECTIONS,  
INC; RICHARD ANDOLSHEK; and  
CHAIRMAN WAYNE BARTHEL, DEO,

Defendants.

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Plaintiff Terry Puckett commenced this action alleging breach of contract by the named defendants. In an order dated August 20, 2015, this Court noted that there did not appear to be a basis for federal jurisdiction over this action. *See* ECF No 3. The only claim raised by Puckett is one arising under Minnesota law, and so 28 U.S.C. § 1331 does not establish jurisdiction over this lawsuit. Moreover, each of the parties to this litigation is alleged to be a citizen of Minnesota. *See* Compl. at 2 [ECF No. 1]. Because the parties are not of citizens of differing states, 28 U.S.C. § 1332 does not establish jurisdiction over this suit, either. Accordingly, Puckett was ordered to show cause within 20 days why this action should not be dismissed without prejudice for lack of jurisdiction. *See* ECF No 3 at 1-2.

That deadline has now passed, and Puckett has not yet responded to the Court's order to show cause. In fact, Puckett has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, in accordance with its prior order, that this matter be dismissed without prejudice, both for lack of jurisdiction and on account of Puckett's failure to prosecute this case. *See Henderson v. Renaissance Grand Hotel,*

267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”). Because the matter is being recommended for dismissal without prejudice, Puckett will not be precluded from raising his breach-of-contract claim in future litigation, including in litigation filed in state court.

#### RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS  
HEREBY RECOMMENDED THAT:

1. This matter be DISMISSED WITHOUT PREJUDICE.
2. Plaintiff Terry Puckett’s application to proceed *in forma pauperis* [ECF No. 2] be  
DENIED AS MOOT.

Dated: September 15, 2015

s/ Jeffrey J. Keyes

Jeffrey J. Keyes

United States Magistrate Judge

#### NOTICE

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

**Under Advisement Date:** This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.